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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th September 2011

No. 8004—li/1 (S)-10/2009-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th June 2011 in Industrial Dispute Case No. 10 of 2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s. Bargarh Regional Co-operative Marketing Society Ltd., Bargarh, Dist. Bargarh and its workman Shri Sishupal Sahu was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 10 OF 2010

The 10th June 2011

Present :

Miss Sarojini Mahapatra, M. A., LL. B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of M/s. Bargarh .. First-party Management
Regional Co-operative Marketing
Society Ltd., Bargarh,
Dist. Bargarh.

And

Their Workman, Shri Sishupal Sahu, .. Second-party Workman
S/o. Singha Sahu,
At Govindapali, Ward No. 1,
P. O./Dist. Bargarh.

Appearances :

For the First-party Management	..	Shri A. K. Guru, Secretary I/c
For the Second-party Workman	..	Self

AWARD

This Award arises out of the reference made by the Government of Orissa, Labour & Employment Department conferred by sub-section (5) of Section 12, readwith Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) in Memo. No. 4571 (6), dated the 2nd June 2010 to determine the schedule questions :

"Whether the action of the management of M/s. Bargarh Regional Co-operative Marketing Society Ltd., Bargarh in dismissing Shri Sishupal Sahu, Salesman from service vide their Letter No. 288, dated the 30th September 2008 is legal and /or justified ? If not, what relief the workman is entitled to ?"

2. The case of the workman stated as follows :

The second-party workman Shri Sishupal Sahu appointed as a Pump Attendant in Fuel Filling Station of the first-party management during the year 1976. Thereafter, he was promoted by the management to the next higher post vide Order No. 913, dated the 1st October 1981. The second-party workman completed 31 years of service under the first-party management without any interruption since beginning of his service up to the date of suspension vide No. 627, dated 22nd December 2006. The second-party workman never committed any illegal practice nor damage or loss for the first-party management during the entire period of his service. On 22nd December 2006 the second-party workman was suspended by the first-party management without any reason. After elapse of five months a charge-sheet issued against him on the 28th April 2007. The first-party management initiated serious allegations against the second-party i. e. (1) Negligence in duties, (2) Unauthorised absence from duties, (3) Disobedience of orders, (4) Misappropriation of funds, (5) Dishonesty in employer's business and (6) Insubordination. The second-party workman being directed by the first-party management submitted explanation on the 9the May 2007 denying the charges levelled against him.

Further it is alleged that the first-party management without considering the explanation and facts appointed Shri R. K. Satapathy, Advocate as Enquiring Officer to enquire the charges levelled against the second-party workman on dated the 15th May 2007. The Enquiring Officer issued notice to the workman to appear before him on the 24th May 2007. The second-party workman fully participated in the enquiry. In the enquiry the charges such as negligence in duties, unauthorised absence in duties and disobedience of orders were established. The allegations of misappropriation of funds and dishonesty in employer's business are not established. After enquiry the management dismissed the second-party workman on the 30th September 2008 which is totally illegal, improper and ill motivated. So the second-party workman made a prayer to consider the matter as per law.

3. The first-party management filed written statement stating that on the 18th July 1976 the second-party workman joined in the service under the first-party management as a Pump Attendant. On the representation of the second-party workman he was promoted to the post of Salesman of

the Fuel Filling Station vide Office Order No. 913, dated the 1st October 1981 and joined in his promotional post on the 3rd October 1981. As a Salesman, the second-party workman was working as Shift-in-charge and the Salesman Attendants were under his control. During the shift hour of the second-party workman, he had received cash from the purchaser by issuing cash receipts and after closure of shift he was to deposit 100% Sales proceeds to the Stock-in-charge or to his reliever and he was punctual in his duties.

Further it is alleged from the written statement that during the service tenure of the second-party, the first-party management gave warning to the second-party workman for his negligence in duty. The second-party workman also committed negligence in duty, unauthorised absence from his duty, disobedience of orders of authority, misappropriated of funds of the first-party management and for his insubordination he was suspended from his service vide Order No. 627, dated the 22nd December 2006. After observing the procedure the first-party management issued chargesheet on dated the 28th April 2007 against the second-party workman. Since the first-party management did not satisfy on the show cause filed by the second-party workman, the matter was referred for domestic enquiry. At the time of domestic enquiry the second-party workman has availed reasonable opportunities to defend his case in a proper manner. After completion of enquiry the Enquiring Officer submitted enquiry report against the second-party workman. After enquiry a copy of the enquiry report was supplied to the second-party workman. Being not satisfied with the reply of the second-party the first-party management placed the matter before the Board on the 22nd September 2008 and did not accept the reply of the second-party workman. Thereafter the second-party workman was dismissed as per Letter No. 288, dated the 30th September 2008 and the second-party workman received the dismissal letter on the same date. So, the first-party management made a prayer to pass an order in favour of the first-party management dismissing the case with cost.

4. The second-party workman filed rejoinder denying all the allegations made by the first-party management against him.

5. Out of the pleadings of the parties, the following issues have been framed for adjudication :

ISSUES

- (i) "Whether the domestic enquiry conducted by the management is fair and proper ?"
- (ii) Whether the action of the management of M/s. Bargarh Regional Co-operative Marketing Society Ltd., Bargarh in dismissing Shri Sishupal Sahu, Salesman from service vide their Letter No. 288, dated the 30th September 2008 is legal and/or justified ?
- (iii) If not, what relief the workman is entitled to ?"

6. Both the parties have filed their documents in respect of their own case. On behalf of the second-party workman, the workman Shri Sishupal Sahu is only examined as W.W. 1. On behalf of the first-party management Ashok Kumar Guru, Secretary-incharge, M/s. Bargarh Regional Co-operative Marketing Society Ltd., Bargarh is examined as M.W. 1 earlier at the time of preliminary issue i. e. Domestic enquiry. The first-party management declined to adduce evidence on other issues i. e. Issue Nos. *ii* and *iii*.

FINDINGS

7. *Issue No. (i)*—As per the order dated the 18th March 2011 the domestic enquiry conducted by the management is fair and proper.

8. *Issue No. (ii)*—Admittedly, the second-party workman Shri Sishupal Sahu appointed as a Pump Attendant in Fule Filling Station of the first-party management in the year 1976. He was promoted to the next higher post vide Order No. 913, dated the 1st October 1981. On dated 22nd December 2006 the second-party workman was suspended by the first-party management. On the 30th September 2008 the second-party workman was dismissed by the first-party management vide Letter No. 288, dated the 30th September 2008. The first-party management framed the charges against the second-party workman alleging for unauthorised absence, disobedience of order and misappropriation of funds and negligence in duty. The Enquiring Officer submitted the report that the second-party workman during the course of enquiry failed to give the detail accounts of his shift duty during the year 2004-2005. The management made an allegation against the second-party workman that he was negligent in duty. The representative on behalf of the first-party management submitted that the second-party workman was unauthorisedly absence in his duty and disobeyed the order of the management.

9. Let us scrutinise the evidence on record coupled with the documents filed on behalf of the management. It is the case of the management that the management had directed the salesman of the Petrol Pump to submit the sales statement and to present retention of sale proceeds and the second-party workman violated the order of the authority. Moreover, the second-party workman was absent in Fuel Filling Station from 8.00 A. M. to 10.00 A. M. on the 1st July 2006 during the domestic enquiry. On the other hand the second-party workman clearly stated in his evidence that the allegation made by the first-party management is false and the management intentionally and forcibly took action against the second-party workman without following the principles. It is clear from the evidence of the second-party workman W. W 1 that on the 28th July 2006, the first-party management issued explanation vide Letter No. 471, dated the 28th July 2006 alleging that he was unauthorisedly absence on the 1st July 2006 from 8.00 A.M. to 10.00 A.M. On receipt of the order, the second-party workman submitted his explanation. The first-party management entrusted the second-party workman vide Memo. No. 252, dated the 24th October 2005 to look after the godown situated at the Mill site. Accordingly, the second-party workman proceeded to the Mill site to check the lock and other materials on dated the 1st July 2006. In the meantime the President of the first-party management inspected the Petrol Pump. So, the second-party workman submitted that on the alleged date and time he was engaged in official duty and has not neglected in his duty in any manner.

The second allegation against the second-party workman alleged by the first-party management is that in subordination by non-joining in the post of stock-in-charge. So, the management made an allegation that he disobeyed the order of the authority. Besides that in spite of the order of the management the second-party workman did not handover the charge on the plea that after the completion of domestic enquiry the second-party workman would handover the charge to the management. The first-party management relied on the documents such as Ext. M-1 to Ext. M-18. Ext. M-1 is the entire proceeding file in D. P. No. 83, dated the 26th March 2007, No. 112, dated the 28th April 2007 and No. 176, dated the 11th June 2007. Ext. M-2 is the order sheet

maintained by the Enquiry Officer. Ext. M-6 is the enquiry report. Ext. M-7 is the true copy of the Board of Management relating to the proceeding. As per Ext. M-6 the second-party workman was negligent in his duty and unauthorised absence from duty and disobeyed the order of the authority. It is crystal clear from Ext. M-6 that the allegation regarding misappropriation of funds and dishonesty in employer's business are not established against the second-party workman. The first-party management relied on the reported decision S. L. J. 2007 Vol. I, P. 2—In absence of victimisation etc. the Labour Court cannot interfere any penalty imposed. The first-party management also relied on the reported decision S. L. J. 2007 (1) P. 6 when enquiry is conducted fairly and properly in absence of any allegation of victimisation or *mala fides* or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed by the management.

10. Burden lies on the second-party workman to establish his case contradicting the alleged allegations made against him by the first-party management. In order to prove its case, the second-party workman Sishupal Sahou adduced evidence on this present issue. As per his evidence the first-party management through its Board of Directors did not accept the enquiry findings of Enquiring Officer and rejected the same vide their Resolution No. 3, dated the 12th April 2008. Thereafter, the first-party management through its Board of Directors Meeting, dated the 22nd September 2008, Resolution No. 3 passed the order and on the same ground of enquiry report dismissed the second-party workman. Admittedly, as per the enquiry report the charge of misappropriation of funds against the second-party workman has not been established. It is further alleged from the evidence of W.W. 1 Sishupal Sahou that the first-party management framed charge for unauthorised absence on the 1st July 2006 from 8.00 A.M. to 10.00 A.M. and called for an explanation for which the second-party workman submitted its explanation. Subsequently considering on his explanation the management did not mark any absent in the attendance register nor deduct any salary for that day. So it is clear from the record that the second-party workman was engaged in his official duty during such period.

11. It is further alleged from the evidence of W. W. 1 that as per the direction of A. R. C. S., Bargarh and D. R. C. S., Sambalpur the first-party management replaced the Stock-in-charge for his post and entrusted the second-party workman to take charge from him. Due to shortage and other pending works the second-party workman did not accept the same and intimated in writing to the first-party management. On receipt of the same, the first-party management entrusted the above work to other employees and they also refused to take over the charge of the Stock-in-charge. The second-party workman submitted that he never disobeyed the order of his authority in any manner. The first-party management issued order before framing the charge-sheet, to take charge of Modern Rice Mill and Garage Section and during the period of enquiry proceeding direct the second-party workman to handover charge to the Secretary of the first-party management. The second-party workman requested the first-party management in writing that as the enquiry proceeding continued he should be allowed to handover the charge after completion of enquiry. The second-party workman relied on some documents which are marked as Ext. W-1 to Ext. W-23. The second-party workman submitted that the Board of Directors did not accept the enquiry finding of the Enquiring Officer against him along with other employees and rejected the same vide their Resolution No. 3, dated the 12th April 2008. Thereafter on the 22nd September 2008 as per Resolution No. 3 the said Board of Directors again accepted the said enquiry report against the other three employees including the second-party workman. It is further alleged from the cross-

examination of W.W. 1 that basing on the direction of the Board of Director, the Secretary issued appointment letter in favour of the second-party workman. Thereafter the said Board of Directors dismissed the second-party workman from his service without any reason. On the 30th September 2008 the second-party workman received the dismissal order. The representative of the management submitted that the second-party workman used obscene words towards his authority but there is no such allegation levelled against the second-party workman. The second-party workman was discharging his duty since long i. e. from 1976 till the date of dismissal. He orally submitted that he was discharging his duties in proper manner and to the satisfaction of the management. So far as the allegations levelled against the second-party workman, the management has failed to establish these allegations. The decisions relied on by the management are not applicable for this case of the second-party workman. It is alleged from the evidence on record as well as documents that the second-party workman has discharged his duty with full satisfaction of the management. It is elicited from the case of the management as well as the workman that the workman has taken steps on each stage when the management raised any allegation against him on the above grounds. The management has failed to establish its case. So I do not find any merit in the case of the management. In view of such facts and circumstances, the relief should be extended in favour of the second-party workman. Accordingly issue No. (ii) is answered.

12. *Issue No. (iii)*—In view of such facts and circumstances, the second-party workman is entitled to get relief. Hence the following Award.

AWARD

The reference is answered on contest but without cost. The action of the management of M/s. Bargarh Regional Co-operative Marketing Society Ltd., Bargarh in dismissing Shri Sishupal Sahu, Salesman from service vide their letter No. 288, dated the 30th September 2008 is not legal not justified. Hence the management is directed to reinstate the second-party workman in service within two months after publication of the Award. The first-party management is also directed to pay the back wages to the second-party workman since the date of dismissal till the date of Award, failing which the first-party management is liable to pay interest @ 10% on the back wages to the workman.

Dictated and corrected by me.

SAROJINI MAHAPATRA
10-6-2011
Presiding Officer
Labour Court, Sambalpur

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10-6-2011
Presiding Officer
Labour Court, Sambalpur

By order of the Governor

T. K. PANDA

Under-Secretary to Government